

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Highland Wind Farm, LLC, for a
Certificate of Public Convenience and Necessity to
Construct a 102.5 Megawatt Wind Electric Generation
Facility and Associated Electric Facilities, to be Located
in the Towns of Forest and Cylon, St. Croix County, Wisconsin

2535-CE-100

COMMENTS OF HIGHLAND WIND FARM, LLC

INTRODUCTION

Highland Wind Farm, LLC (“Highland”) respectfully submits these comments in response to the Commission’s March 15, 2016 Order to Reopen, Notice and Request for Comments (“Request for Comments”) for purposes of addressing the issues that the Circuit Court for St. Croix County remanded to the Commission in *Town of Forest v. Pub. Serv. Comm’n of Wis.*, Case No. 14-CV-18 (the “Court Order”). The following is a summary of Highland’s position on the three issues the Commission identified in its Request for Comments:

1. Highland supports the Commission’s intent to modify its Final Decision on Reopening (the “CPCN Order”) to remove the pre-established 95 percent compliance standard and to address any complaints concerning alleged noncompliance with the noise standards, based on the factual situation, at the time any noncompliance is alleged.
2. Highland supports the Commission’s intention to take official notice, pursuant to Wis. Stat. § 227.45, of (i) The Wind Siting Council Wind Turbine Siting-Health Review and Wind Siting Policy Update, and (ii) Review of Studies and Literature Relating to Wind Turbines and Human Health. In addition, Highland asks that the Commission disregard assertions submitted to countervail those documents where the assertions are not supported by or consist in peer-reviewed conclusions that are made to a reasonable degree of scientific certainty.
3. Because the Commission correctly concluded in its CPCN Order that there is no evidence to a reasonable degree of scientific certainty showing a causal link between the presence of wind turbines and health impacts – a conclusion which no party challenged and which

continues to be supported by the literature – the Commission should not impose sound limits below the limits contained in Wis. Admin. Code § PSC 128.14(3).

Consistent with these positions, Highland requests that the Commission: (i) remove the 95 percent pre-established compliance standard from the CPCN Order as indicated in the Request for Comments; (ii) take official notice of the documents identified in the Commission's Request for Comments; and (iii) remove from the CPCN Order any sound limit below that specified in Wis. Admin. Code § PSC 128.14(3).

COMMENTS

I. IT IS APPROPRIATE FOR THE COMMISSION TO REMOVE THE PRE-ESTABLISHED 95 PERCENT COMPLIANCE STANDARD.

A. Removing The Pre-established 95 Percent Compliance Standard From The CPCN Order Will Satisfy The Court Order And Will Place Highland On Similar Compliance Footing With Other Wind Energy Facilities.

Highland supports the Commission's stated intention to remove the pre-established 95 percent compliance standard from the CPCN Order, and to do so in the manner indicated in the Commission's Request for Comments. Although Highland did not object to the imposition of the 95 percent compliance standard in the CPCN Order, and although Highland defended that aspect of the CPCN alongside the Commission in the litigation, there is no requirement under Wis. Stat. § 196.491, Wis. Admin. Code PSC ch. 128 or in any Commission precedent for the Commission to pre-establish a compliance percentage of any kind for this or any other generation facility when it comes to sound limits or any other operational restriction. Indeed, those challenging this aspect of the CPCN in the Circuit Court never suggested that a pre-established sound limit compliance standard was necessary in order for the CPCN to be reasonable or otherwise lawful. Nor was the Circuit Court in any way prescriptive when it set

aside the 95 percent standard with respect to how the Commission should proceed on remand. The Court Order thus left the Commission free to remove the standard from the CPCN Order.

Importantly, removal of the pre-established compliance standard from the CPCN Order will not create a regulatory anomaly. Leaving the technical aspects of determining compliance for purposes of enforcement is the regulatory norm, not the exception. That norm holds in the context of wind facility CPCNs previously approved by the Commission. None of those other CPCNs contain pre-established sound limit compliance percentages. Thus, removing the pre-established noise compliance standard from the CPCN Order will place Highland on equal footing in this regard with all of the wind generation CPCNs the Commission has issued in the past. Once the pre-established compliance standard is removed, the Commission would enforce the sound limits in Highland's CPCN just as it would the sound limits in any other wind generation facility CPCN issued by the Commission, and just as it has proposed in its Request for Comments: By "address[ing] any complaints concerning alleged noncompliance with the noise standards, based on the factual situation, at the time any non-compliance is alleged." (Request for Comments, p. 2.) As discussed next, in the case of Highland, the Commission will have a more robust monitoring and reporting protocol in place than for other wind energy systems it has approved. This monitoring and reporting protocol was not challenged on judicial review, and it will aid the Commission in determining compliance with the sound limits in the CPCN Order.

B. Removing The Pre-established 95 Percent Compliance Standard Would Preserve The Commission's Ability To Monitor and Enforce The Sound Limits In The CPCN.

In its order approving Highland's project, the Commission concluded that "Highland submitted sound level modeling and a proposed curtailment plan that demonstrates, using the

most conservative modeling assumptions, that the proposed project will meet applicable noise limits, including the Wis. Admin. Code § PSC 128.14(3) nighttime audible noise limit of 45 dBA.” (CPCN Order, p. 5.) In refusing to disturb the Commission’s finding on this issue, the Circuit Court held that “the conclusion the Commission reached [regarding compliance with sound limits] was clearly supported by substantial evidence in the record.” (Court Order, p. 113.) Because no party challenged the Court Order, the Commission’s determination that Highland is capable of complying with the sound limits imposed in the CPCN Order is now final and unappealable.

In reaching its ultimate conclusion that Highland can comply with the sound limits imposed in the CPCN Order, the Commission noted the application of conservative modeling assumptions. (CPCN Order, p. 25.) In addition, the Commission committed to “verify and confirm the modeling predictions through vigorous and robust post-construction sound monitoring and other reporting conditions.” (Id.) The “Post-Construction Noise Monitoring Plan” adopted by the Commission in the CPCN Order was the topic of significant discussion in the Order and the Commission adopted several requirements for reporting and monitoring that exceeded the plan put forth by Highland. (CPCN Order, pp. 27-34.) The Post-Construction Noise Monitoring Plan stands separate and apart from the Compliance Showing requirement, and nothing in the Circuit Court Order disturbed that monitoring plan in any respect. Accordingly, all of the measures that the Commission took to ensure that it would have adequate data and cooperation from Highland to permit the Commission to monitor sound generated by the project – and if necessary to enforce the sound limits in the CPCN Order – remain intact.

II. TAKING OFFICIAL NOTICE OF THE DOCUMENTS IDENTIFIED IN THE REQUEST FOR COMMENTS IS APPROPRIATE TO THE EXTENT THE PURPOSE IS TO ACKNOWLEDGE ESTABLISHED TECHNICAL OR SCIENTIFIC FACTS.

The Commission has proposed to take official notice of two specific documents in this reopening: (i) Wisconsin Wind Siting Council, *Wind Turbine Siting-Health Review and Wind Siting Policy Update* (Oct. 2014) (the “2014 Review”); and (ii) PSC Staff, *Review of Studies and Literature Relating to Wind Turbines and Human Health*, Dec. 2015 (the “2015 Review”). An agency’s official notice of documents is specifically addressed in Wis. Stat. § 227.45(3), which permits the Commission to “take official notice of any generally recognized fact or any established technical or scientific fact” so long as parties are “afforded an opportunity to contest the validity of the official notice.” Although the Commission did not specify in detail which “generally recognized fact(s)” or “established technical or scientific fact(s)” are the subject of the Commission’s intent to take official notice with respect to these documents, it appears reasonable to assume that the Commission wishes to take official notice of the fact that state mandated reviews were undertaken regarding wind energy systems and health, and that those reviews came to specific conclusions.

Highland believes it is appropriate for the Commission to take official notice of these documents for that purpose. Importantly, both the Siting Council Review and Commission Review place a decisive emphasis on reliable and scientifically supported information. For example, the 2015 Review states that “[o]nly results published in *the peer-reviewed literature* are provided in this report.” (2015 Review, p. 2.) The 2014 Review similarly recognizes that “not all scientific documents are of equivalent rigor or impact” and, therefore, afforded “greater weight to *peer-reviewed literature* on wind-health issues.” (2014 Review, p. 1-2, Appendix B.) Given both the Wind Siting Council’s and Commission Staff’s emphasis on peer-reviewed

materials, the Commission should not take official notice of rebuttal or countervailing evidentiary materials that have not been subjected to a similarly stringent standard. Indeed, accepting such materials would run contrary to the policy underpinning Wis. Stat. § 227.45(3) and would undermine the Commission’s ability to reach a well-reasoned outcome premised on reliable and verifiable scientific facts.

A. The Wisconsin Wind Siting Council Wind Turbine Siting-Health Review and Wind Siting Policy Update Supports The Commission’s Conclusion In This Case That No Causal Relationship Has Been Established Between Wind Turbines And Human Health To A Reasonable Degree Of Scientific Certainty.

The Wisconsin Wind Siting Council Wind Turbine Siting-Health Review and Wind Siting Policy Update covered, among other things, health-related information published in the scientific literature from 2011 to 2014. (2014 Review, p. 2.) In preparing its legislatively mandated 2015 report, the Council proceeded on the principle that “not all scientific documents are of equivalent rigor or impact. Accordingly, more weight was given to some types of literature over others.” (Id.) Narrowing its attention to objective and controlled scientific investigations, the Council’s ultimate conclusion was that “based on objective surveys near wind energy projects . . . most individuals do not experience annoyance, stress, or perceived adverse health effects due to the operation of wind turbines. This conclusion is especially true if wind turbine siting is used to limit high noise exposure.” (Id., p. 4.)

Importantly, on the basis of its review and its conclusions, the Council declined to recommend any changes to wind energy-related legislation in Wisconsin:

Wisconsin’s wind siting rule, Wis. Admin. Code ch. PSC 128, is the product of an extensive and transparent review process and has been in effect since March 16, 2012. Absent any specific information arising from a wind project reviewed and approved under PSC 128, and *based on the survey of peer-reviewed scientific research regarding the health impacts of wind energy systems*, and the study of state and national regulatory developments regarding the siting of wind energy

systems, the *Council majority finds no reason at this point to recommend legislation regarding the siting of wind energy systems.*

(Id., p. 4 (emphasis added).) These conclusions are consistent with those that the Council made to the Commission regarding the promulgation of the Wind Siting Rules in 2010. Then, the Council majority concluded that “given appropriate siting measures, including 50/45 dB(A) day/night noise limits, 1,250-foot wind turbine setback, and less than 30 hours of shadow flicker per year for non-participating residences, it is reasonable to conclude that adverse health effects would be unlikely to occur.” (Id., p. 6.) These conclusions were codified and remain in force in PSC 128, and they underpin the basis for the application of the requirements of PSC 128 in Highland’s CPCN.

As to the existence of evidence showing a causal effect between wind turbines and health to a reasonable degree of scientific certainty, the Council’s ultimate conclusion in the 2014 Review on health impacts was unequivocal. The Council concluded:

It is currently not possible, based on available research, to conclude with scientific certainty whether . . . adverse health effects are caused by wind energy systems. Furthermore, there exists empirical research suggesting that these issues are affected by factors including expectations of health impacts and personal attitudes and opinions with regard to wind energy systems.

(Id., p. 13.) The Council’s 2014 conclusion squares with the Commission’s conclusion in the CPCN that “[no] causal link between audible or inaudible noise at wind generating facilities and human health risks has been established to a reasonable degree of scientific certainty.” (CPCN Order, p. 16.) These conclusions become especially important, as discussed further below, when the Commission determines whether and to what extent it may be appropriate to require Highland to make accommodation for residents who claim to be more sensitive than others to the presence of wind turbines.

B. The Review of Studies And Literature Relating To Wind Turbines And Human Health Further Supports The Commission’s Conclusion In This Case That No Causal Relationship Has Been Established Between Wind Turbines And Human Health To A Reasonable Degree Of Scientific Certainty.

The Review of Studies and Literature Relating to Wind Turbines and Human Health was prepared by PSC Staff for the Legislature. In preparing the 2015 Review, Staff did not address literature or studies which were part of the Wind Siting Council’s 2014 Review. (2015 Review, p. 1.) Rather, Staff sought any directly relevant studies or literature that was made available from August 2013 (the literature cutoff date for the 2014 Review) and October 2015. Staff concluded that “[b]ased on the few additional studies in the current review, the research literature on this subject continues to show trends similar to those identified in the 2014 WSC report.” (*Id.*, p. 1.)

Staff’s 2015 Review focused on recent studies and several critical reviews of studies. The most thoroughly reviewed and discussed study was the Health Canada Study, which Staff concluded “does not allow for making causal inferences” between wind turbines and health impacts. (*Id.*, p. 3.) Staff observed that “Health Canada clearly includes a disclaimer that the results produced by the study do not provide definitive answers on their own and should be considered in conjunction with other research available on the topic.” (*Id.*) Staff concluded that even the associative (rather than causal) analysis showed that the study results did not support an association between exposure to wind turbine noise up to 46 dBA and quality of life. (*Id.*, p. 4.) Ultimately, Staff concluded that the “Health Canada Study results do not support an association between exposure to [wind turbine noise] up to 46dBA and sleep disruption as measured through actimetry.” (*Id.*) This conclusion further validates the notion that imposition of the 45 dBA night, 50 dBA day sound limits of PSC ch. 128 are appropriate and sufficient to protect the public interest.

The remainder of the studies and literature reviewed by Staff in the 2015 Review support the Staff's ultimate conclusion in the 2015 Review that "the recent literature on this subject continues to reach conclusions similar to those identified in the [2014 Review]." At most, the studies agree on an *association*, rather than a causal link, between exposure to wind turbine noise and annoyance. Staff reports that there is no conclusive evidence, however, for a causal link between wind turbine noise and any particular health issue, including sleep disturbance, and that more generally a "lack of evidence to support other hypotheses regarding human health effects caused by wind energy systems." (Id., p. 8.) Overall, reported Staff, "the research in this area is limited and insufficient to determine causal relationships between variables." (Id.) As with the 2014 Report, the 2015 Report reinforces the Commission's conclusion in the CPCN Order that no causal link between audible or inaudible noise at wind generating facilities and human health risks has been established to a reasonable degree of scientific certainty. For this reason, as discussed below, there is no scientific basis for the Commission to consider the six previously identified sensitive residences or the additional residences contained in Ex.-Forest-Junker-20 for lower sound limits than provided for in Wis. Admin. Code § PSC 128.14(3).

III. IN THE ABSENCE OF RELIABLE EVIDENCE SHOWING ADVERSE HEALTH IMPACTS TO RESIDENTS AT OR BELOW THE NOISE LIMITS IN WIS. ADMIN. CODE § PSC 128, THE COMMISSION SHOULD NOT IMPOSE LOWER NOISE LIMITS FOR ANY SUBSET OF RESIDENCES IN THE PROJECT AREA.

In its Request for Comments, the Commission has given the public an opportunity to state "why the six identified sensitive residences, and other potentially sensitive residences already identified in Ex.-Forest-Junker-20, should be considered for lower noise requirements than provided for in Wis. Admin. Code § PSC 128.14(3), so that the Commission can decide whether to include lower noise requirements for either these six or any additional residences."

Highland believes it would not be proper to impose limitations on sound levels for any residence in the project area beyond those contained in Wis. Admin. Code § PSC 128.14(3). As discussed in greater detail below, there is no scientifically reliable basis in the record for doing so. In addition, separate requirements for residents on the basis of the information in the record would do much to undermine the institutional efforts behind the creation of the Wind Siting Rules, and the subsequent efforts which resulted in a recommendation by the Wind Siting Council to leave the rules intact in their current form unless and until further scientific research demonstrates a causal relationship between health issues and sound levels at or below those imposed in § PSC 128.14(3).

A. The Commission Should Not Subject Any Of The Nineteen Residences¹ In The Project Area To Sound Limits More Restrictive Than Provided For In § PSC 128.14(3) Unless Doing So Is Supported By Evidence To A Reasonable Degree Of Scientific Certainty.

In setting aside the Commission's approval of Highland's voluntary concession to six residences in the project area, the Circuit Court has required the Commission to determine on the basis of record evidence whether lower sound limits than those set forth in Wis. Admin. Code § PSC 128.14(3) should be imposed on any of the nineteen residences at issue. The standard for whether such restrictions ought to be imposed should be whether there is evidence in the record to a reasonable degree of scientific certainty that the health sensitivities they have claimed would be worsened if they are subjected to sound levels at or below the 50 dBA day and 45 dBA night limits set forth in Wis. Admin. Code ch. PSC 128. In the CPCN Order, the Commission already adopted this science-based standard, concluding that no causal link between audible or inaudible

¹ Ex.-Forest-Junker-20 identifies a total of seventeen residences. Two of the seventeen residences in Ex.-Forest-Junker-20 (House Nos. 16 and 17) share the same address, bringing the total number of addresses on Ex.-Forest-Junker-20 to sixteen. Of the original six residences, three appear in Ex.-Forest-Junker-20. These include OID Nos. 1, 3 and 4 on Ex.-HWF-Mundinger-10 (Schedule 1), which corresponds to House Nos. 1, 8 and 16 on Ex.-Forest-Junker-20. The other 3 of the originally identified 6 residences do not appear on Ex.-Forest-Junker-20, and include OID Nos. 2, 5 and 6 on Ex.-HWF-Mundinger-10 (Schedule 1). These three addresses, added to the sixteen on Ex.-Forest-Junker-20, brings the total number of residences to nineteen.

noise at wind generating facilities and human health risks has been established to a reasonable degree of scientific certainty. (CPCN Order, p. 16.) No party appealed or otherwise challenged this conclusion, and it stands as final and unappealable.

There is no scientific basis in the record for the Commission to deviate from the standard underlying this conclusion on reopening. As discussed above, the 2014 and 2015 Reviews also essentially apply the standard of a reasonable degree of scientific certainty, and all but confirm that the Commission's conclusion in the CPCN Order remains valid today. Indeed, the sound levels set forth in § PSC 128.14(3) were conservatively set on the basis of the Wind Siting Council's careful review of available information regarding potential impacts to human health as a *ceiling* of regulation for local units of government. As a result of the Wind Siting Council's 2014 Review, the sound limits and other aspects of wind energy siting in ch. PSC 128 have been reaffirmed as sufficient given the available research, as indicated by the Council's decision not to propose any legislative changes to wind siting legislation.

Before discussing whether there is any scientifically reliable evidence in the record to support the imposition of lower sound limits for some of the residences in the project area below those set forth in § PSC 128.14(3), it bears discussing what is meant by evidence that rises to "a reasonable degree of scientific certainty." Although that question is not answered by the Wisconsin Administrative Procedure Act, the *Daubert* rule as adopted by the Legislature for Wisconsin courts provides a useful guide. In 2011, the Legislature amended Wis. Stat. § 907.02 governing the admission of expert testimony to conform to the federal standard outlined in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). This standard, now the threshold in Wisconsin, is meant to ensure that technical, scientific, and expert testimony "is based on a reliable foundation and is relevant to the material issues." *State v. Giese*, 2014 WI App 92, ¶ 18,

356 Wis. 2d 796, 854 N.W.2d 687 (citing *Daubert*, 509 U.S. at 589 n.7). It focusses on weeding out “*ipse dixit*” testimony and ensuring that the trier of fact is not exposed to mere “conjecture.” *Id.*, ¶¶ 18-19. Thus, “scientific, technical, or other specialized knowledge” may only be admitted if it “is based upon sufficient facts or data” which “is the product of reliable principles and methods.” Wis. Stat. § 907.02. Courts must focus on the methodology underlying any proffered expert opinion, including “whether the scientific approach can be objectively tested, whether it has been subject to peer review and publication, and whether it is generally accepted in the scientific community.” *Giese*, 356 Wis. 2d 796, ¶ 18.

This science-based approach is essentially the one undertaken by both the Wind Siting Committee and the Commission in promulgating the Wind Siting Rules, the one that underlies the Commission’s previous conclusions about the Highland’s projects impacts on public health and welfare, and is the approach that underlies the conclusions made in both the 2014 and 2015 reviews that are the subject of the Commission’s official notice on reopening. There is no reason for the Commission to deviate from this approach on reopening.

B. Because The Record Contains No Evidence To Reasonable Degree Of Scientific Certainty Of Adverse Health Impacts At Or Below The Sound Limits Found In § PSC 128, The Commission Should Not Impose Lower Sound Limits On Any Particular Residences In The Project Area.

Applying the standard of reasonable scientific certainty, there is no basis in the record, particularly as bolstered by the 2014 and 2015 Reviews, for the Commission to impose sound limits lower than those set forth in § PSC 128.14(3) for any of the residences within the project area. For this reason the Commission should decline to revisit its final and now unappealable determination in the CPCN that there is not sufficient evidence, to a reasonable degree of scientific certainty, to support a finding that project wind turbines could cause adverse health impacts at sound levels at or below those set forth in § PSC 128.14(3).

1. There is no evidence to a reasonable degree of scientific certainty that the health conditions listed by residents in the project area would be aggravated by wind turbines or that they would otherwise be susceptible to adverse health impacts from the wind turbines.

Even if there were sufficiently detailed information in the record regarding the claimed health issues identified by the occupants of these nineteen residences,² there is no evidence to a reasonable degree of scientific certainty that Highland's wind turbines would worsen any of the identified conditions at the identified locations if the turbines are installed and operated in compliance with the sound limits in Wis. Admin. Code § PSC 128.14(3).

The Commission correctly concluded in the CPCN Order that there is insufficient evidence to a reasonable degree of scientific certainty to show that wind turbines cause adverse impacts to human health, and the Commission came to that conclusion on the basis of the record before it. Specifically, with all of the health-related information regarding all of these nineteen residences in the record, the Commission concluded in Finding Nos. 5 & 6 in its CPCN Order that the Highland Project is in the public interest "after considering alternative locations, individual hardships, safety, reliability, and environmental factors" and that the Highland project will not have an "undue adverse impact" on, among many other things, "public health and welfare." (CPCN Order, p. 5.) In reaching its conclusion, the Commission explained as follows:

There is debate in the scientific community as to whether noise at certain levels from wind turbines causes or contributes to any health issues. When the Commission established the noise limits in Wis. Admin. Code ch. PSC 128, it considered these alleged impacts and concluded that the established noise standards were protective of public health and welfare. As the Commission noted in its prior decision in this proceeding, the Commission is not convinced that a causal link between audible or inaudible noise at wind generating facilities and

² As discussed in section 2. below, for the majority of the health conditions identified by occupants of the nineteen residences, there is very little corroborating evidence for even the existence of the condition, such as medical records, or information regarding the frequency, intensity, prognosis or treatability of the identified health condition.

human health risks has been established to a reasonable degree of scientific certainty.

(CPCN Order, p.16 (footnote omitted).) The most important aspect of the Commission's reasoning on the issue of health impacts is the role of the Wind Siting Rules and their basis in scientific inquiry: "When the Commission established the noise limits in Wis. Admin. Code ch. PSC 128, it considered these alleged impacts and concluded that the established noise standards were protective of public health and welfare." (Id.) With this statement, the Commission acknowledges that the sound limits and other operational limitations contained in the Commission's Wind Siting Rules – and which the Commission applied to Highland's CPCN in this case – have a legislatively sanctioned, scientific underpinning that should inform the Commission's decision.³ As the Commission considers on reopening whether to impose sound limits lower than those set forth in Wis. Admin. Code § PSC 128.14(3) for any of the nineteen residences, it should proceed – as it has throughout this lengthy proceeding – from this principle.

The scientific underpinnings of the setbacks, sound limits and other restrictions of the Wind Siting Rules are as valid a basis for a decision in this reopening as they were when the Commission issued the CPCN. When the Commission initially denied the CPCN, it was because of concerns that Highland may not be able to comply with the sound limits in Wis. Admin. Code § PSC 128.14(3), not because operation of the turbines within those limits would cause adverse public health impacts. (See initial Final Decision, pp. 20-22 (discussion of lack of evidence for sound-related health impacts).)

³ The scientific approach utilized by the Wind Siting Council and the Commission in promulgating the Wind Siting Rules, and the scientific conclusions underlying them, are further underscored by the 2012 conclusions of the Wisconsin Department of Health Services that "our review of current scientific knowledge indicates that levels of noise, flicker and infrasound measured from wind turbines at current setback distances do not reach those that have been associated with objective physical health effects." (Ex.-HWF-Mundinger-4.)

The 2014 and 2015 Reviews demonstrate that the Commission’s un-appealed findings of fact that the Highland project will not compromise public health and welfare remain as valid now as when they were first decided. Those Reviews, discussed at length above, together account for the only legislatively sanctioned review of peer-reviewed scientific studies on the health impacts of wind energy systems undertaken since Highland’s CPCN was issued and they reinforce the validity of the wind siting rules as adopted and applied to Highland. For this reason alone, there is no basis for the Commission to impose sound limits on any residences in the project area lower than those already contained in § PSC 128.14(3).

2. For most of the residences at issue, there is insufficient evidence of the existing health status of the occupants on which to base a decision to impose sound limits lower than those allowed in § PSC 128.14(3).

Even if there were evidence to a reasonable degree of scientific certainty that the health conditions identified with respect to the nineteen residences are likely to be aggravated by the presence of wind turbines beyond the required setbacks – a proposition already rejected by the Commission on the basis of the record and echoed in the 2014 and 2015 Reviews – the health information that was provided to the Commission is in general not useful. For the majority of the nineteen residences, the most detailed health-related information in the record is simply the Town-sponsored health survey filled out by the resident. From just that form, one cannot glean useful information regarding the severity, intensity, or frequency of the claimed condition.

For example, a number of respondents to the health surveys that were included in Ex.-Forest-Junker-20 checked the “headaches/migraines” box on the survey form. There is no information about the frequency of the reported headaches, their severity, or whether they are treatable. (Ex.-Forest-Junker-20.) The same paucity of information holds for other conditions commonly identified by the residents for whom the Town submitted health surveys in the record,

including dizziness or vertigo (combined next to one check box) and unsteadiness or motion sickness (also combined next to one check box). (Id.) Again, there is no basis for determining the extent to which these conditions affect the survey respondents. Thus, even if there were a scientifically valid basis for supposing a lower sound limit than provided for in § PSC 128.14(3) could prevent health impacts with respect to certain conditions, the record is simply too undeveloped for these residences with respect to the existence, intensity or status of the claimed health conditions for those conditions to form a rational basis for a decision to impose lower sound limits for those residences. While a few of the occupants of the nineteen residences provided more detailed information such as medical records and detailed testimony about their health issues, there is no evidence to a reasonable degree of scientific certainty in the record that the health issues identified by those occupants will be worsened if Highland constructs and operates the project in accordance with the siting plan adopted by the Commission in the CPCN Order and within the 45 dBA (night) and 50 dBA (daytime) sound limitations of Wis. Admin. Code § PSC 128.14(3).

CONCLUSION

For all of the reasons set forth above, Highland respectfully requests that the Commission: (i) remove the 95 percent pre-established compliance standard from the CPCN Order as indicated in the Request for Comments; (ii) take official notice of the documents identified in the Commission's Request for Comments; and (iii) remove from the CPCN Order any sound limit below that specified in Wis. Admin. Code § PSC 128.14(3).

Dated this 15th day of April, 2016.

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